

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SUSAN BRANHAM, PHILLIP
TOUSIGNANT, VERA VIERA, and
PAUL RUFF,

Plaintiffs,

-against-

8:10-CV-0111 (LEK)

RICHARD DAINES, as Commissioner,
New York State, Department of Health,

Defendant.

MEMORANDUM-DECISION AND ORDER

I. BACKGROUND

Before the Court is an Order to Show Cause for a Preliminary Injunction brought by Plaintiffs Susan Branham, Phillip Tousignant, Vera Viera, and Paul Ruff (“Plaintiffs”). Dkt. No. 2 (“Pls.’ Mot.”). Plaintiffs’ Motion was filed along with an Emergency Motion for a temporary restraining order (“TRO”) seeking to bar the New York State Department of Health (“DOH”) from implementing a change in State policy that directs eighteen to twenty Service Provider Agencies (“Providers”) to transition their Medicaid Traumatic Brain Injury Waiver (“Waiver”) participants to other approved provider agencies. *Id.*

Plaintiffs allege that DOH’s change in policy occurred without adequate notice and without the necessary safeguards required under the United States Constitution and the Medicaid Act, 42 U.S.C. § 1396a, *et. seq.* *Id.* Plaintiffs bring the instant action against Richard Daines (“Defendant”) in his capacity as Commissioner of the New York State Department of Health pursuant to 42 U.S.C. § 1983.

Plaintiffs' TRO was denied by Order of the Court on February 3, 2010. Dkt. No. 5. Plaintiff's Order to Show Cause for a Preliminary Injunction was not decided at that time.

II. DISCUSSION

For reasons presented in the Court's February 3, 2010 Memorandum-Decision and Order, Plaintiffs' failed to present sufficient documentation for the Court to grant the drastic remedy of a TRO enjoining Defendant's implementation of its new policy. Plaintiffs' concurrent Order to Show Cause for a Preliminary Injunction shall, therefore, be construed as a Motion for a Preliminary Injunction. Plaintiffs are directed to submit supporting documentation in accordance with the Local Rules, setting forth the grounds for their request. A hearing will be held on February 25, 2010 at 9:30 a.m.

III. CONCLUSION

Based on the foregoing, it is hereby

ORDERED, that Plaintiffs' Order to Show Cause for a Preliminary Injunction (Dkt. No. 2) shall be construed as a Motion for a Preliminary Injunction; and it is further

ORDERED, that a hearing will be held before the Honorable Lawrence E. Kahn of the Northern District of New York in Albany, NY on **Thursday, February 25, 2010 at 9:30 a.m.**, or as soon thereafter as counsel may be heard, to determine if a preliminary injunction shall be issued in this case; and it is further

ORDERED, that sufficient cause appearing therefore, service by mail of a copy of Plaintiffs' Motion and this Order on the counsel of record on or before **9:00 a.m. on Monday, February 8, 2010** shall constitute sufficient service thereof; and it is further

ORDERED, that the briefing schedule on the preliminary injunction Motion will proceed

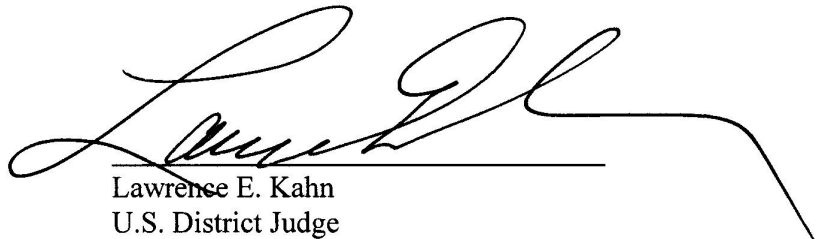
as follows:

- (1) Plaintiffs shall serve their briefing on the Motion for preliminary injunction no later than Monday, February 15, 2010.
- (2) Defendants shall serve response papers no later than Monday, February 22, 2010.
- (3) The hearing on the Motion will be held on **Thursday, February 25, 2010 at 9:30 a.m.**, and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: February 05, 2010
Albany, New York



Lawrence E. Kahn
U.S. District Judge